UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

DAVID OPPENHEIMER,	§	
Plaintiff	§	**CA No. _________**
	§	
	§	
v.	§	
	§	
ROADTRIPPERS, INC,	§	
JAMES FISCHER, JOHN LAUCK	§	
TATIANA D. PARENT, and	§	
ANDREW FICKAS	§	
Defendants	§	**JURY DEMANDED**
	§	

PLAINTIFF'S ORIGINAL COMPLAINT

1. Plaintiff, David Oppenheimer ("Oppenheimer" or "Plaintiff"), for his complaint against Defendants, Roadtrippers, Inc. ("Roadtrippers"), James Fischer ("Fischer"), John Lauck ("Lauck"), Tatiana D. Parent ("Parent"), and Andrew Fickas ("Fickas"), collectively called "Defendants," alleges:

JURISDICTION/VENUE

1. Oppenheimer's claims arise under the copyright laws of the United States, 17 U.S.C. 101 *et. seq.*, (hereinafter the Copyright Act.), and 17 U.S.C."1202 *et seq.* of the Digital Millennium Copyright Act ("DMCA").

2. Subject matter and personal jurisdiction is vested in this Court pursuant to 28 U.S.C. 1338. Additionally, this Court has subject matter jurisdiction under 28 U.S.C. 1331 inasmuch as this claim arises under the copyright laws of the United States. Venue in this judicial district is proper pursuant to 28 U.S.C. 1400(a) and 28 U.S.C. 1391(b) and (c).

THE PARTIES

3. Plaintiff is a citizen of North Carolina engaged in the business of professional photography who resides in and has a principal place of business in Asheville, Buncombe County, North Carolina.

4. Defendant Roadtripper is an Ohio corporation, having its principal business activity in the development and maintenance of a web based software application and mobile app that helps travelers plan road trips and find points of interest while traveling in the United States and Canada. Roadtripper may be served at its principal place of business at 131 E. McMicken Avenue, Cincinnati, OH 45202.

5. Fischer is an individual residing in Hamilton County, OH and is the chief executive officer and/or other principal of Roadtrippers. Fischer may be served at 511 Howel Ave, Cincinnati, OH 45220 or 131 E. McMicken Avenue, Cincinnati, OH 45202, or such other place as he may be found.

6. Lauck is an individual residing in Hamilton County, OH and is an officer, manager, web developer, and/or other principal of Roadtrippers. Lauck may be served at 703 Purcell Ave, Cincinnati, OH 45205 or 131 E. McMicken Avenue, Cincinnati, OH 45202, or such other place as he may be found.

7. Parent is an individual residing in Hamilton County, OH and is an officer, manager, director, registered agent, and/or other principal of Roadtrippers. Parent may be served at 125 E. McMicken Ave, Cincinnati, OH 45202, or 2111 Percival Way, The Villages, FL 32162, or 131 E. McMicken Avenue, Cincinnati, OH 45202, or such other place as he may be found.

8. Fickas is an individual residing in Hamilton County, OH and is an officer, manager, software developer, and/or other principal of Roadtrippers. Fickas may be served at 8550 Darnell

Ave, Cincinnati, OH 45236, or 131 E. McMicken Avenue, Cincinnati, OH 45202, or such other place as he may be found.

INTRODUCTORY FACTS

9. Oppenheimer is a professional photographer, and is the author (photographer) of, and at all times relevant to this claim, has been and is now the sole owner and proprietor of all right, title and interest in and to the copyrights in four (4) photographs at issue in this matter ("Works").

10. Oppenheimer makes his photographic works available online at his website http://www.performanceimpressions.com.

11. Oppenheimer has complied in all respects with Title 17, U.S.C. § 102, *et seq.*, and all other laws governing federal copyright applicable to the Works and registered the copyrights with the Register of Copyrights at the U.S. Copyright Office. See **Exhibits A - D**.

Image	**Reg. No.**	**Reg. Date**	**Title**
Wholefoods Market in Asheville, NC (**Exhibit A**)	VAu 1-102-583	May 19, 2012	Travel and Event Photography by David Oppenheimer
Pack's Tavern in Asheville, NC (**Exhibit B**)	VAu 1-102-583	May 19, 2012	Travel and Event Photography by David Oppenheimer

Charlotte Douglas International Airport Terminal (**Exhibit C**)	VAu 1-102-583	May 19, 2012	Travel and Event Photography by David Oppenheimer
Crowds at Bonnaroo Music and Arts Festival (**Exhibit D**)	VAu 1-133-970	June 19, 2013	2013 Bonnaroo Music Festival

12. At all relevant times hereto, Oppenheimer has and continues to be the sole owner of all rights, titles, and interests in and to the aforementioned registrations and photographs. Oppenheimer's copyrights in the above-described Works are presently valid and subsisting, and were valid and subsisting from the moment of their creation, and all conditions precedent to the filing of this suit have occurred.

13. Each of Oppenheimer's infringed Works included copyright management information ("CMI") as well as a copyright registration notice, so Defendants were given sufficient notice that the Works were registered.

14. Oppenheimer initially became aware of Defendant's first instance of unlicensed use of the Works on February 6, 2014. Multiple articles were posted to Defendants' website, https://roadtrippers.com that featured Oppenheimer's photographic works without proper license or attribution.

15. On February 6, 2014, Oppenheimer discovered that Defendants infringed his copyrights when Defendants published or allowed to be published Oppenheimer's image of a

Wholefood's Market in Asheville, NC (**Exhibit A**) at the following URL: https://roadtrippers.com/places/whole-foods-market-asheville/49959. A screenshot of the URL is provided herein as **Exhibit E**. The corresponding registration number is VAu 1-102-583.

16. On or after February 6, 2014, Oppenheimer discovered that Defendants infringed his copyrights when Defendants published or allowed to be published Oppenheimer's image of Pack's Tavern in Asheville, NC (**Exhibit B**) at the following URL: https://roadtrippers.com/places/packs-tavern-asheville/36535. A screenshot of the URL is provided herein as **Exhibit F**. The corresponding registration number is VAu 1-102-583.

17. On August 11, 2014, Oppenheimer discovered that Defendants infringed his copyrights when Defendants published or allowed to be published Oppenheimer's image of the Charlotte Douglas International Airport Terminal (**Exhibit C**) at the following URL: https://roadtrippers.com/us/charlotte-nc/services/charlotte-douglas-international-airport. A screenshot of the URL is provided herein as **Exhibit G**. The corresponding registration number is VAu 1-102-583.

18. On September 17, 2014, Oppenheimer discovered that Defendants infringed his copyrights when Defendants published or allowed to be published Oppenheimer's image of crowds at the Bonnaroo Music and Arts Festival (**Exhibit D**) at the following URL: https://roadtrippers.com/us/manchester-tn/attractions/bonnaroo-music-arts-festival. A screenshot of the URL is provided herein as **Exhibit H**. The corresponding registration number is VAu 1-133-970.

19. Upon information and belief, Defendants located Oppenheimer's Works on his website, http://www.performanceimpressions.com.

20. On March 1, 2016, Oppenheimer sent Defendants a letter informing them of their unauthorized use of his copyrighted Works and requesting information regarding their publication.

Although it is believed by Oppenheimer that Defendants removed access to the Works, Defendants failed to reply to Oppenheimer's request for information.

21. On December 26, 2016, Oppenheimer, through the undersigned counsel, sent another letter again requesting information regarding the unauthorized publication and attempting to resolve the actual copyright infringement. Despite Oppenheimer's best efforts, Defendants have failed to provide the requested information, and the parties have been unable to resolve these issues. Suit has thus become necessary.

22. Additionally, because Defendants did not register an agent under the Digital Millennium Copyright Act ("DMCA") at the U.S. Copyright Office prior to the infringements of Oppenheimer's Works, Defendants do not qualify as a service provider afforded "safe harbor" from infringing activity under the DMCA.

CAUSES OF ACTION

COUNT I – COPYRIGHT INFRINGEMENT

23. Oppenheimer re-alleges and incorporates paragraphs 1 – 22 hereinabove as if recited *verbatim*.

24. Defendants have infringed Plaintiff's copyrights in and to the above-described images described in paragraph 11 by scanning, copying, reproducing, distributing, publishing and/or otherwise using, unauthorized copies of said photographs within the United States in violation of the copy rights of Title 17.

25. Upon information and belief, Defendants have benefitted from their unlicensed use of the Works while Oppenheimer as suffered monetary damages, irreparable injury to Oppenheimer's business, reputation, and goodwill; and therefore, Oppenheimer is entitled to injunctive relief, damages, and all other relief set forth in the Copyright Act.

COUNT II – CONTRIBUTORY COPYRIGHT INFRINGEMENT

26. Oppenheimer re-alleges and incorporates paragraphs 1 – 25 hereinabove as if recited *verbatim*.

27. In the event Oppenheimer's Works were hyperlinked into Defendants' website or hosted elsewhere, and thereby not stored directly on Defendants' servers, Defendants are liable as contributory infringers because they had actual and/or constructive knowledge of another's infringing conduct and induced, caused, or materially contributed to that conduct.

28. For example, Defendants have caused, enabled, facilitated, and materially contributed to the infringement complained of herein by, providing the tools and instructions for infringement via their website and have directly and indirectly promoted the infringement and refused to exercise their ability to stop the infringement made possible by their distribution.

29. As a direct and proximate result of Defendants' misconduct, Oppenheimer has been substantially harmed in an amount to be proven at trial.

COUNT III – VICARIOUS COPYRIGHT INFRINGEMENT

30. Oppenheimer re-alleges and incorporates paragraphs 1 - 29 hereinabove as if recited *verbatim*.

31. Pleading further but without waiver of the foregoing, Oppenheimer shows that Fischer, Lauck, Parent and/or Fisckas are the officers, directors, managers, and/or other principals of Defendant Roadtrippers.

32. On information and belief, Fischer, Lauck, Parent and/or Fisckas own much of Roadtrippers' stock, control nearly all decisions of Roadtrippers, and are the dominant influences in the company. Fischer, Lauck, Parent and Fisckas provide hands-on decision making in the

activities of Roadtrippers, making many of the decisions of the company. Upon information and believe Fischer, Lauck, Parent and/or Fisckas actually placed the infringing work onto the Roadtrippers' website, and Fischer, Lauck, Parent and/or Fisckas have an obvious and direct financial interest in the infringing activity.

33. In addition, the conduct of Roadtrippers as described above was performed and accomplished through the direction, control and conduct of Fischer, Lauck, Parent and/or Fisckas personally. Fischer, Lauck, Parent and/or Fisckas had the right and ability to supervise and/or control the infringing conduct of Roadtrippers, and/or to stop the infringement once it began. Additionally, on information and belief, Fischer, Lauck, Parent and/or Fisckas received pecuniary benefit from Roadtrippers' acts of infringement.

34. Accordingly, Fischer, Lauck, Parent and/or Fisckas are personally liable to Oppenheimer as joint and/or contributory infringers, or are otherwise vicariously liable for the actions of Roadtrippers.

COUNT IV – VIOLATIONS OF THE DIGITAL MILLENIUM COPYRIGHT ACT

35. Oppenheimer re-alleges and incorporates paragraphs 1 - 34 hereinabove as if recited *verbatim*.

36. Oppenheimer clearly marked each of his images to distinguish his Works from the works of others in his field. Defendants violated the DMCA by removing Oppenheimer's copyright management information ("CMI").

37. In creating the infringements identified above, upon information and belief Defendants intentionally removed and/or omitted Oppenheimer's CMI from copies of Oppenheimer's Works.

38. Upon information and belief Defendants distributed copies or derivatives of such works knowing that such CMI had been removed or omitted without authorization.

39. At the time Oppenheimer's CMI was removed from copies of his Work, and at the time they distributed copies of the works from which the CMI had been removed or omitted, Defendants knew or had reasonable grounds to know that such behavior would induce, enable, facilitate, and/or conceal the infringement of Oppenheimer's copyrights.

40. Oppenheimer is entitled and seeks to recover statutory damages from Defendants not exceeding $25,000 for *each act* committed in violation of his rights under 17 U.S.C. § 1202.

41. Pursuant to 17 U.S.C. § 203(b)(5), Oppenheimer is entitled and seeks to recover his reasonable attorney's fees.

CAUSATION/DAMAGES

42. As a direct and proximate result of Defendants' above-described acts of copyright infringement and DMCA violations, Oppenheimer has sustained actual damages in an amount not yet ascertained, but which is believed to be in excess of $500,000. Such actual damages include, but are not limited to, lost profits and/or lost licensing revenue, disgorgement of defendants' profits attributable to their infringements, statutory damages, research time tracking down and documenting the infringements, attorney time spent placing joint infringers on notice of the infringements, and getting the images removed from servers and web sites.

43. In addition to damages for copyright infringement, Plaintiff seeks recovery of DMCA penalties set out above.

RELIEF REQUESTED

44. Oppenheimer demands an accounting by Defendants of their activities in connection with their infringements of his copyrights in and to the above-described and attached works, as well as their gross profits and income derived therefrom.

45. Oppenheimer is entitled and seeks to recover actual damages plus the profits of Defendants attributable to the infringements, as well as DMCA penalties not exceeding $25,000 for each act committed of his rights under 17 U.S.C. § 1202.

46. Alternatively, because the image was registered prior to Defendants' infringements, Oppenheimer is entitled to and seeks to recover statutory damages up to but not exceeding $150,000 (One Hundred Fifty Thousand Dollars) per work infringed, plus reasonable and necessary attorney's fees.

Oppenheimer DEMANDS JUDGMENT AS FOLLOWS:

47. Defendants, their agents, employees and/or servants be enjoined *pendente lite* and permanently from infringing Oppenheimer's copyrights in any manner whatsoever, and from publishing through any visual media, and from selling, marketing or otherwise distributing any of his images;

48. That Defendants be required to deliver up, under oath, for impounding during the pendency of this action, and for destruction thereafter, all images which infringe Oppenheimer's copyrights, and all prints, film negatives, magnetic tapes, digitally scanned and/or stored images, and all other articles by means of which such infringing copies may be reproduced, which are in the possession or under the direct or indirect control of Defendants;

49. That Defendants be required, jointly and severally, to pay over to Oppenheimer his actual damages sustained, in addition to all their profits attributable to the infringements, and which are not taken into account in computing Oppenheimer's actual damages incurred as a result of Defendants' copyright infringements described herein;

50. That Defendants provide an accounting of all gains, profits and advantages derived by them as a result of the willful and unlawful acts of copyright infringement above-described;

51. That Defendants jointly and severally be ordered to pay to Oppenheimer his costs and attorney's fees; and

52. That Oppenheimer have such other and further relief as this court shall deem just and proper.

DEMAND FOR JURY TRIAL.

Plaintiff, David Oppenheimer, demands a jury trial in this cause of action.

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